

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF NATURAL RESOURCES

In the Matter of Proposed Adoption
of the Rules of the State of Minnesota
Governing Waters and Watercraft Speed
Limit Zones on the Lower St. Croix River,
Minnesota Rules, Part 6105.0330.

REPORT OF THE
ADMINISTRATIVE LAW JUDGE

The above-entitled matter came on for hearing before Administrative Law Judge Phyllis A. Reha on June 19, 1995, at 7:00 p.m. in the Washington County Boardroom, 14900 - 61st Street North, Stillwater, Minnesota.

This Report is part of a rulemaking proceeding held pursuant to Minn. Stat. §§ 14.131 to 14.20, to hear public comment, determine whether the Minnesota Department of Natural Resources ("DNR" or "the Department") has fulfilled all relevant substantive and procedural requirements of law or rule applicable to the adoption of the rule, evaluate whether the proposed rule is needed and reasonable, and assess whether or not modifications to the rule proposed by the Department after initial publication are substantially different from the rule as originally proposed.

David Iverson, Assistant Attorney General, 900 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2130, appeared on behalf of the Department at the hearing. The Department's hearing panel consisted of Kim Elverum, Boat and Water Safety Coordinator at DNR, and Steve Johnson, River Management Supervisor at DNR.

Fifty-three persons attended the hearing and forty-seven signed the hearing register. The Administrative Law Judge ("ALJ" or "the Judge") received seventeen agency exhibits and four public exhibits during the hearing. The hearing continued until all interested persons, groups, and associations had an opportunity to be heard concerning the adoption of these rules.

The record remained open for the submission of written comments until July 10, 1995, twenty calendar days following the date of the hearing. Pursuant to Minn. Stat. § 14.15, subd. 1 (1992), five working days were allowed for the filing of responsive comments. At the close of business on July 17, 1995, the rulemaking record closed for all purposes.

The Department must wait at least five working days before it takes any final action on the rule; during that period, this Report must be made available to all interested persons upon request.

When the Department files the rules with the Secretary of State, it shall give notice on the day of filing to all persons who requested that they be informed of the filing.

Based upon all the testimony, exhibits, and written comments, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Nature of the Proposed Rules and Statutory Authority

1. The proposed rules amend the existing Minnesota Rule 6105.0330, subp. 2(B) establishing a "slow/no wake" zone on the lower St. Croix river between Stillwater, Minnesota, and Hudson, Wisconsin. The existing rule establishes the slow/no wake zone from the railroad bridge at mile 17.3, along the channel running between a string of islands in the river and the shore on the Minnesota side, and terminating at the southern end of the last island in the string (known colloquially and hereinafter referred to as "Beer Can Island"). The modification of the zone proposed in these rules would place the southernmost end of the slow/no wake zone at the Interstate 94 Bridge (hereinafter I-94) and move the zone eastward to the Wisconsin shore, encompassing the width of the river from I-94 northward one mile to a dike that extends across much of the river. The dike extends across the river from the Wisconsin side to a point just north of Beer Can Island.

2. The Department cited its authority to set standards for water surface use management as Minn. Stat. §§ 86B.205. SONAR, at 1. The Commissioner of Natural Resources is authorized to adopt rules on the speed and manner of use of watercraft by that statute. The Judge finds that the Department has general statutory authority to adopt this rule.

Procedural Requirements

3. On October 3, 1994, the Department published a Notice of Solicitation of Outside Opinion at 19 State Register 743 regarding a proposal to adopt rules expanding the slow/no wake zone on the St. Croix south from Beer Can Island to I-94 and from shore to shore in South Hudson Bay (the area between I-94 and the dike on the Wisconsin side). In addition, the St. Croix River between mile 31.0 and 24.5 (Stillwater/Arcola) would be slow/no wake between noon and sunrise the following day on Saturdays, Sundays, and holidays between May 15 and September 15. The proposal in the Notice of Solicitation conforms to a resolution adopted by the Washington County Board requesting the DNR adopt such rules.

4. On April 14, 1995, the Department filed the following documents with the Chief Administrative Law Judge:

- a. a copy of the proposed rules certified by the Revisor of Statutes;
- b. the proposed Order for Hearing;
- c. the Notice of Hearing proposed to be issued;

- d. the Statement of Need and Reasonableness ("SONAR");
- e. a statement by the Department of the anticipated duration and attendance at the hearing; and
- g. a notice of discretionary additional public notice pursuant to Minn. Stat. §14.14, subd. 1a.

5. On May 3, 1995, the Department mailed the Notice of Hearing to all persons and associations who had registered their names with the Department for the purpose of receiving such notice, all persons who requested a hearing on these rules, and all persons to whom additional discretionary notice was given by the Department.

6. On May 8, 1995, the Department published the Notice of Hearing and the proposed rules at 19 State Register 2210.

7. On May 9, 1995, the Department issued a news release to twenty-four print and broadcast media outlets containing a summary of the proposed rule and informing the public as to ways in which comments could be made on the proposed rules.

8. On May 22, 1995, the Department filed the following documents with the Administrative Law Judge:

- a. a photocopy of the pages of the State Register containing the Notice of Hearing and the proposed rules;
- b. the Notice of Hearing as mailed;
- c. the Department's certification that its mailing list was accurate and complete as of May 3, and the Affidavit of Mailing the Notice to all persons on the Department's mailing list;
- d. the Affidavit of Mailing the Notice to those persons to whom the Department gave discretionary notice;
- e. an Affidavit of Mailing the press release issued by the Department to media outlets;
- f. a copy of the Notice of Solicitation of Outside Opinion published on October 3, 1994, and all materials that were received in response to the Notice from interested persons, including comments on the Stillwater/Arcola zone not included in this rulemaking; and
- g. the names of Agency personnel or others solicited by it to appear.

9. The notice published by the Department provided for a hearing only if twenty-five persons requested a hearing within thirty days of the notice. More than twenty-five persons requested a hearing during that period.

Impact on Agricultural Land

10. Minn. Stat. § 14.11, subd. 2 imposes additional statutory requirements when rules are proposed that have a "direct and substantial adverse impact on agricultural land in this state." The statutory requirements referred to are found in Minn. Stat. §§ 17.80 to 17.84. The rules proposed by the Department will have no substantial adverse impact on agricultural land within the meaning of Minn. Stat. § 14.11, subd. 2.

Fiscal Note

11. Minn. Stat. § 14.11, subd. 1, requires state agencies proposing rules that will require the expenditure of public funds in excess of \$100,000 per year by local public bodies to publish an estimate of the total cost to local public bodies for the two years immediately following adoption of the rules. There will be no costs to local public bodies incurred due to the proposed rules.

Small Business Considerations in Rulemaking

12. Minn. Stat. § 14.115, subd. 2 requires state agencies proposing rules that may affect small businesses to consider methods for reducing adverse impact on those businesses. DNR noted in its SONAR and Notice of Hearing that the proposed rules could have a "tangential affect" (*sic*) on some small businesses such as marinas but that there would be no direct impact on these businesses within the meaning of the rules. SONAR, at 4; Notice of Hearing, at 3. The small business owners who testified at the hearing, operators of an outfitting firm and a marina supported the proposed rule as a benefit to their businesses. DNR adequately considered the impact of the rules on small businesses.

Reasonableness of the Proposed Rules

13. The Administrative Law Judge must determine, inter alia, whether the need for and reasonableness of the proposed rule have been established by the Department by an affirmative presentation of facts. Minn. Stat. § 14.14, subd. 2. The question of whether a rule is reasonable focuses on whether it has a rational basis. The Minnesota Court of Appeals has held a rule to be reasonable if it is rationally related to the end sought to be achieved by the statute. Broen Memorial Home v. Minnesota Department of Human Services, 364 N.W.2d 436, 440 (Minn. App. 1985); Blocher Outdoor Advertising Company v. Minnesota Department of Transportation, 347 N.W.2d 88, 91 (Minn. App. 1984). The Supreme Court of Minnesota has further defined the burden by requiring that the agency "explain on what evidence it is relying and how the evidence connects rationally with the agency's choice of action to be taken." Manufactured Housing Institute v. Pettersen, 347 N.W.2d 238, 244 (Minn. 1984). An agency is entitled to make choices between possible standards as long as the choice it makes is rational. If commentators suggest approaches other than that selected by the agency, it is not the proper role of the Administrative Law Judge to determine which alternative presents the "best" approach.

14. The Department prepared a Statement of Need and Reasonableness ("SONAR") in support of adoption of the proposed rules. At the hearing, the Department primarily relied upon the SONAR as its affirmative presentation of need and reasonableness for each provision. The SONAR was supplemented by the comments made by the Department at the public hearing and in its written post-hearing comments.

15. The Findings in this Report address each part of the proposed rules, since the entire rule was commented upon and the rule is brief. The Findings address the issues raised by public commentary. The Department has proposed no changes to the rule since publication in the State Register. After careful review and consideration of the Department's Statement of Need and Reasonableness and based upon the Department's oral presentation at the hearing and comments submitted after the hearing, the Administrative Law Judge finds that the Department has affirmatively established the need and reasonableness of each part of the proposed rule as otherwise qualified or determined by the following Findings and Conclusions.

16. Should any changes be made to the rule after publication in the State Register, the Administrative Law Judge must determine if the new language is substantially different from that which was originally proposed. Minn. Stat. § 14.15, subd. 3 (1992). The standards to determine if the new language is substantially different are found in Minn. Rules Part 1400.1100. Because the Department made no changes in the proposed rules after publication, the Judge finds that no substantial change has occurred.

Proposed Rule 6105.0330 - Restricted Speed Zones

17. As discussed above, the entire proposed rule consists of altering the description of the existing slow/no wake zone to expand the area subject to the speed restriction. Many people commented on the rule, both in support and in opposition. The comments will be discussed by issue in the following Findings.

Effect of Boat Speed and Numbers on Water Conditions

18. A reason cited by the DNR for adopting the proposed rules is the combined effect of the number of boats and the speed at which these boats travel on the water conditions found at the Stillwater/Hudson portion of the St. Croix river. SONAR, at 7. The result of these factors are waves on the river. The DNR described the waves as “crashing” onto the Minnesota riverbank. SONAR, at 3. Several commentators disputed whether the water conditions resulted from boat wakes. Helen Mahoney submitted videotapes taken from her home on the St. Croix. That residence is located south of Beer Can Island and north of I-94 on the Minnesota side. The videotapes were taken prior to the beginning of construction on the I-94 bridge. The videotapes depict use of the river by watercraft ranging from small powerboats to ocean-going yachts (one identifying a home port of Jacksonville, Florida). On many occasions the videotape is able to follow the wake of a boat all the way to the riverbank where it does indeed crash on the shore. The numbers of boats and the speeds at which they travel does cause significant disturbance on the river, reaching all the way to the riverbank.

Erosion

19. The DNR identifies controlling erosion on the Minnesota side of the St. Croix River at Stillwater/Hudson as a reason justifying the expansion of the slow/no wake zone. SONAR, at 7. David Erickson maintains that the only erosion on the river is the normal erosion caused by the effect of water levels on the river, not boat wakes. David Fabio asserts that the erosion is caused by a combination of boat wakes, high water levels on the river, and a loss of shoreline trees. The DNR relied upon surveys of boat density on the river, complaints from riparian landowners, and observation by Department staff to conclude that erosion is a problem and a slow/no wake zone is a suitable solution. Prior to the hearing, Tom and Lynda Ockaly, Mary Blackmore, the Washington County Board of Commissioners, the City Council of the City of Lakeland, the Lower St. Croix Management Commission (LSCMC), and Mary Petron cited reducing erosion as a reason for expanding the slow/no wake zone.

20. At the hearing, Karl Bremer submitted a photographic display of the Minnesota side of the St. Croix river from approximately forty yards north of the bouy marking the southernmost end of the existing slow/no wake zone, extending south approximately three hundred yards. Public Exhibit 2. The riparian land south of the existing slow/no wake zone shows significant erosion. The photographs show a number of trees with their roots exposed and another four trees that have toppled. The roots of those trees were exposed by erosion. The only significant difference between the land north of the bouy and the land south of the bouy is the slow/no wake requirement north of the bouys. The DNR has demonstrated that extending the slow/no wake zone is needed and reasonable to check an ongoing problem with erosion.

Safety

21. In its SONAR, the Department cites the traffic patterns through the expansion area as a reason for imposing a slow/no wake speed restriction. The DNR described the area as follows:

[C]lockwise from the main channel area discussed above: an island [Beer Can Island] that is perhaps the single most heavily used boating island on the St. Croix; a narrow, busy channel between the island and the old toll bridge dike that connects South Hudson Bay with the main channel; the Hudson Sailboat Mooring Area; the Hudson courtesy dock; the passage under the old toll bridge road; the Hudson seawall courtesy docking area; the Hudson public boat ramp; the largest marina on the St. Croix; a gas dock; and a privately owned public boat ramp.

SONAR, at 7.

All of the features listed are within a one square mile area on the river.

22. Len Labore prepared a map detailing the location of the features in the expanded slow/no wake zone and the routes often taken by watercraft to, from, or past these features. Public Exhibit 1. This map indicates that no significant portion of the area the DNR seeks to establish as slow/no wake is free from use by watercraft. Prior to the hearing, Harold Fotsch submitted a letter regarding his view of the St. Croix from his slip on the river at the St. Croix Marina. The commentator's description of boat traffic is consistent with the description in Public Exhibit 1. Edwin Miller, Mary Petron, and LSCMC identified wakes from passing boats as causing problems for boats at the gasoline dock in South Hudson Bay. The resulting movement of the boats and the dock has caused gasoline to spill into the river. James and Barbara Stareicha identified boat wakes as causing excessive rocking of docks, creating a risk of falling in the river when a person transfers from a boat to a dock. Edwin Miller and R. M. Henneberger suggested that wakes were the cause of damage to sailboats in the St. Croix Marina. Several commentators mentioned the proximity of swimming beaches as a cause for safety concerns. Mary Petron identified boats traveling under I-94 at high speeds as a hazard to those boaters, other watercraft traffic, and swimmers. Betty Stively; Harry Anderson, Commodore of the Wild River Yacht Club; Bob Owens; Larry Mau; James Torseth; and Helen Mahoney testified about the heavy boating use this area receives. Some commentators cited specific instances of near collisions in this area due to the high density of watercraft use and excessive speeds of boats on the river.

23. Raymond Harris and Cindy Bramwell testified that the river is not unsafe for use. These commentators acknowledged that some boaters in the area failed to use "common sense." Raymond Harris and David Fabio urged the Department use enforcement of existing regulations instead of imposing a blanket regulation. The DNR's experience with enforcement has been uneven. The testimony of commentators at the hearing suggests that the perception of DNR enforcement directly correlates to the size of the boat on the river. At the hearing, several large boat owners expressed the opinion that the DNR is overregulating the use of the river. Deborah Asch, proprietor of PJ Asch Outfitters, and a frequent kayaker on the St. Croix

river, expressed her opinion that there was no DNR enforcement of watercraft regulations. The spontaneous negative reaction of the audience at the hearing to this comment suggests that the DNR is attempting to enforce the safety rules, but with little impact on many boaters who continue to violate safety regulations.

24. The Department has demonstrated that regulating the speed of watercraft in the area proposed for a slow/no wake zone is needed to improve the safety of boaters, swimmers, and gasoline dock workers along the river. Imposing a speed regulation is also needed to reduce property damage and to prevent spilling gasoline into the river. The reasonableness of the regulation proposed for improving safety will be discussed below in the Findings on alternatives.

Alternatives

25. A number of commentators urged the Department to adopt lesser restrictive alternatives than a year-round, twenty-four hour a day speed restriction. Raymond Harris suggested a 100-foot slow/no wake zone be created extending from I-94 along the Minnesota side, up to the dike, across the river to the Wisconsin side and south along the Wisconsin side to I-94. Raymond Harris, Jay Montpetit, and Joe Riley urged that any slow/no wake restriction be limited to peak times, weekend days and holidays from 12:00 p.m. to 6:00 p.m.

26. The DNR has experience with the 100-foot zone method of slow/no wake enforcement. Such a zone was imposed in 1977 from the south end of Beer Can Island to I-94. Disputes arose between boaters and enforcement officers because clear landmarks were not available to indicate the borders of the restricted zone. The volume of watercraft traffic using the center of the river is likely to increase greatly, since boaters would be able to move at their own choice of speed between I-94 and the areas just below the dike in the middle of the river. Two channels exist near that point to continue further north on the river. The wakes created by these passing boats will flow to the banks of the river. While these wakes may be attenuated somewhat, erosion is still likely. Creating a 100-foot zone for slow/no wake traffic would exacerbate the crowding on the river and increase the risk of accident. The difficulties the Department has experienced in enforcing the restriction demonstrates that the suggestion is not reasonable.

27. Limiting the slow/no wake restrictions to 12:00 to 6:00 p.m. on weekend days and holidays was considered by the DNR. This alternative is suitable to relieve some of the safety concerns addressed by the proposed rule. However, allowing boat wakes at nonpeak times would still cause erosion of the riparian land and result in a loss of trees. An additional reason cited by the DNR in rejecting the peak hours proposal is that Wisconsin has already adopted a rule and the Minnesota rule must conform to the Wisconsin language. The consistency argument will be addressed in a later Finding. The DNR has demonstrated that limiting the slow/no wake zone to peak hours is not reasonable.

28. A number of commentators urged that a slow speed zone be imposed, rather than a slow/no wake zone. Many of these comments appear to have been directed at the now-withdrawn proposal for the Stillwater/Arcola zone. The DNR considered whether such an

approach would address the problems identified in the Stillwater/Hudson zone. In its Posthearing Comment, the DNR stated:

[A] slow speed zone was considered and rejected for primarily two reasons. First, as defined at Minn. R. 6105.0320, subp. 5 (1993), a slow speed zone would not avoid the creation of wakes which are one of the primary causes of shoreline erosion. Second, a slow speed zone would result in there being two speed limits in the Hudson area (slow-no wake for the Hudson narrows, and slow speed for the remainder of the bay area) which could unnecessarily confuse boaters.

DNR Posthearing Comment, at 2.

The Department has demonstrated that imposing a slow speed zone is not a reasonable alternative to a slow/no wake zone.

29. David Fabio suggested that an alternative method of addressing these problems is boater education, rather than a posted speed restriction. A number of commentators suggested that the only restriction required was “common sense” by boaters. The videotape of traffic on the river shows that many boaters are not concerned about wakes and the potential for shoreline erosion and safety problems. Raymond Harris submitted petitions with 128 signatures of boaters opposed to expanding the slow/no wake zone. Without imposing a rule requiring slower speed, boaters are unlikely to voluntarily reduce speed. The volume of traffic on the river would require the DNR to maintain a continuous presence and engage in continual enforcement activity, if only to promulgate the information needed for boater education. The attitude expressed by many commentators was hostile to DNR enforcement of any rules on the St. Croix River. There is ample evidence in the record that many boaters are either not aware of, or not willing to adhere to, the existing regulations required for safe operation of watercraft. There is no evidence in the record to support a conclusion that boaters will change their behavior through education. These boaters are currently creating a difficult situation regarding riparian land and a dangerous situation regarding safety. The rulemaking record supports adoption of a speed restriction.

Vagueness

30. Charles K. Dayton, an attorney with the law firm of Leonard, Street and Deinard, maintained that the standard of slow/no wake is too vague to be reasonable. The commentator also maintained that a slow/no wake standard was unconstitutionally vague. The DNR responded that persons of ordinary intelligence understand what is required under the standard and there is no confusion. Few commentators opposing the imposition of a slow/no wake zone expressed any confusion over what was required of them. David Fabio, among other commentators, indicated how much longer his trips would be if the existing slow/no wake zone is expanded. To be able to calculate trip length, the approximate speed of a boat traveling at a slow/no wake speed must be known. The proposed rule does not establish the standard of slow/no wake. Rather, that standard is part of an existing rule and that part is not being changed. The slow/no wake standard is not vague. The Administrative Law Judge does not have the authority, in this proceeding, to alter the definition of “slow/no wake.”

Consistency with Wisconsin Standards

31. Wisconsin Administrative Code, NR 5.36, the Wisconsin rule establishing a slow/no wake speed restriction in the Stillwater/Hudson zone, provides that its rules will not be effective unless both Minnesota and Wisconsin adopt an identical rule. The DNR cited the Wisconsin rule as a reason for not adopting any of the alternatives proposed. Although the DNR cannot delegate its authority to adopt rules to any other entity, the interrelation of rules can be a factor in determining whether any particular alternative is reasonable. The DNR has shown specific reasons for not accepting any of the proposed alternatives, independent of the wording of the Wisconsin rule. Maintaining consistency with the Wisconsin standard is a reasonable factor supporting the DNR's proposed rules.

Extension of Slow/No Wake Zone South of I-94

32. Karl Bremer, Representative Peg Larson, and Dottie Mau urged the extension of the slow/no wake zone south of I-94 in the vicinity of Beanies, a marina on the Minnesota side. This change would require the zone to be extended two blocks south of the I-94 bridge and out to the main channel on the river. The reasons for extending the slow/no wake zone south of the bridge are identical to those for establishing the zone north of the bridge. The DNR declined to extend the zone south of I-94. While extending the zone south of I-94 would appear to be reasonable to protect the marina located there, a large number of boaters would be affected by the rule change. Since the I-94 bridge acts as a dividing line for many boaters, there is a strong possibility that the persons who would be affected by the rule change did not participate in this rulemaking proceeding. Any proposed change that would further extend the slow/no wake zone beyond the description in the State Register would constitute a substantial change from the proposed rule as published in the State Register and, therefore, cannot be adopted in this proceeding.

Illegality of Overregulation

33. Peter Keppler, President of the Lower St. Croix Waterways Association (hereinafter "Waterways Association"), questioned "when over regulation becomes illegal." Waterways Association Comment, at 1. The commentator posed the following hypothetical:

For example, if the WDNR [Wisconsin Department of Natural Resources] and MDNR suggested that this area be entirely free of boats, this would clearly be regarded as overregulation by a vast majority of the public. But would this be illegal? If so what is the threshold that would make it illegal? If it would not be illegal, does this imply that our government agencies are free to regulate the River in any way they wish, with no regard for what is plausible or sensible.

Waterways Association Comment, at 1.

It is easiest to answer the questions posed by the commentator in reverse order. An agency is not free to regulate anything in any way it wishes. The agency must act within its statutory authority as determined by the Minnesota Legislature. See Finding 2, above. Every part of a proposed rule must be both needed and reasonable. See Finding 12,

above. If the Administrative Law Judge (who is not part of the DNR) finds a rule to be defective for failure to be either needed or reasonable, the agency must either fix the defect as suggested by the Judge or take the rule to the Legislative Commission to Review Administrative Rules (LCRAR) for review and comment. The thresholds for “illegality” are statutory authority, need, and reasonableness.

In this rulemaking proceeding, the DNR has not proposed an extreme solution to the erosion and safety problems identified on the St. Croix River. There has been no banning of boats from the river, no permit requirement imposed on boaters, no requirement for reservations to use the river (as one must make, for example, to use a State Park campground), and no quotas established. Any of these options would reduce traffic on the St. Croix. Instead, the DNR has required boaters to slow down over a one square mile stretch of water that is heavily used. As discussed in the Findings above, alternatives to the DNR’s proposed rule have been fully aired. The

DNR has chosen an option found to be both needed and reasonable to meet the problems demonstrated in the record. The proposed rule does not constitute overregulation, nor is it illegal.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Minnesota Department of Natural Resources ("the Department") gave proper notice of this rulemaking hearing.
2. The Department has substantially fulfilled the procedural requirements of Minn. Stat. §§ 14.14, subds. 1, 1a and 14.14, subd. 2 (1992), and all other procedural requirements of law or rule so as to allow it to adopt the proposed rules.
3. The Department has demonstrated its statutory authority to adopt the proposed rules, and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 14.05, subd. 1, 14.15, subd. 3, and 14.50 (i) and (ii) (1992).
4. The Department has demonstrated the need for and reasonableness of the proposed rules by an affirmative presentation of facts in the record within the meaning of Minn. Stat. §§ 14.14, subd. 2 and 14.50 (iii) (1992).
5. There were no additions or amendments to the proposed rules suggested by the Department after publication of the proposed rules in the State Register and therefore the rules are not substantially different from the proposed rules as published in the State Register within the meaning of Minn. Stat. § 14.15, subd. 3 (1992), and Minn. Rules pts. 1400.1000, subp. 1, and 1400.1100 (1991).
6. Any Findings which might properly be termed Conclusions are hereby adopted as such.
7. A Finding or Conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage the Department from further modification of the proposed rules based upon an examination of the public comments, provided that no substantial change is made from the proposed rules as originally published, and provided that the rule finally adopted is based upon facts appearing in this rule hearing record.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the proposed rules be adopted as proposed.

Dated this 10 th day of August, 1995.

/s/
PHYLLIS A. REHA
Administrative Law Judge

Reported: Tape Recorded; No Transcript Prepared, Two Tapes